

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11341 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MAHMAD MUSABHAI JET

Appearance:

1. Special Civil Application No. 11341 of 2002
MRS VASAVDATTA BHATT for Petitioner No. 1
MR JS BRAHMBHATT for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 23/12/2003

ORAL JUDGEMENT

Heard learned advocate Ms.Vasvdatta Bhatt
appearing on behalf of the petitioner Corporation and

learned advocate Mr.J.S.Brambhhatt for respondent workman.

#. This Court has issued Rule on 28th November, 2002 and granted ad-interim relief in terms of para-8[C]. The petitioner Corporation has challenged the award passed by the Industrial Tribunal, Baroda in Reference No.114 / 1995 dated 29th September, 2001 wherein punishment imposed by the competent authority for stoppage of four increments with cumulative effect, has been set aside by the Industrial Tribunal.

#. Learned advocate Ms.Vasavdatta Bhatt has submitted that the Industrial Tribunal has committed gross error in not considering the fact that it was fatal accident occurred due to negligence of the driver and therefore, the tribunal has committed error in setting aside the punishment order imposed by the competent authority. She also submitted that finding given by the tribunal that punishment order has been passed without issuing show cause notice to the respondent workman. She also pointed out that relevant Service Rule 6[aa] and 5 wherein unless in case of termination, dismissal / discharge and reversion, show cause notice is not necessary to be issued to the workman by the competent authority and this case is not covered under Clause 5 as referred by the learned advocate Ms.Bhatt. Therefore, it is contended that finding in respect of the show cause notice not given to the workman before imposing punishment, is not correct.

However, in respect of the other finding, it is pertinent to note that accident occurred, was attended by Mr.R.M.Brambhhatt, Depot Manager, Bharuch who was examined in departmental inquiry and who had given a statement in support of the report. It has come on record that one question was asked to the reporter the Depot Manger that at the relevant time, when the accident had occurred, whether he was present at the spot or not. The answer given that he was not present but at the relevant time, he was at the workshop. The second question which was asked to the reporter who had attended the accident and therefore, the accident form was required to be filled up by him and therefore, the question posed to the effect that whether had filled up the accident form or not. This question was simply answered in negative and stated that he had not filled up the accident form but said accident form was filled up by one Mr.Surawala who had not visited the place of accident. Therefore, the third question which was asked to the reporter that once the accident had been attended by him and not filled up the form by him and the form has been filled up who had not

attended the accident, whether it is correct or not. The answer is given in affirmative. Therefore, in view of said evidence led in the departmental inquiry, the Industrial Tribunal has come to the conclusion that the reporter who had attended the accident, had not filled up the accident form and the person who had not attended the accident, had filled up the accident form. Therefore, no eye witness was examined in departmental inquiry and said Mr.Surawala who had not attended the accident personally and the place of accident, even though, he had filled up the accident form and also made report against the respondent workman. Therefore, the tribunal has come to the conclusion that when the person having no knowledge of the accident, had filled up the form and on that ground, charge levelled against the workman is not proved in the departmental inquiry. The tribunal has also taken into consideration one more important aspect that whatever papers of the accident, has been prepared on the basis of papers of police department in criminal case which was lodged against the respondent being No.8618 / 1993, wherein the respondent workman has been declared acquittal and that order of competent criminal court has been produced on record at Exh.36 before the Tribunal. Therefore, the tribunal has come to the conclusion that except the reporter, no other person has been examined in the departmental inquiry and no other eye witness was examined in departmental inquiry. Therefore, considering this fact, report has not been proved in the departmental inquiry and allegation which made against the respondent workman, were not satisfactorily proved and hence, on the basis of such evidence, ultimately, punishment has been imposed by the competent authority. Therefore, according to the tribunal, finding is baseless and perverse as the same is not based on any legal evidence. Therefore, punishment based on such finding, cannot be imposed against the respondent workman and ultimately, the tribunal has set aside the punishment order and directed the Corporation to pay difference of salary to the respondent workman within 30 days from the date of publication of the award.

#. This Court has taken into consideration the submissions made by the learned advocate Ms.Vasavdatta Bhatt and Learned advocate Mr.J.S.Brambhatt appearing on behalf of the respective party. I have also gone through the award passed by the Industrial Tribunal, Baroda and in my opinion, the tribunal has rightly appreciated the evidence which was led in departmental inquiry. On the contrary, the tribunal has given cogent reasons while coming to the conclusion that there was no satisfactory legal evidence led in the departmental inquiry and

therefore, the allegation made against the respondent workman, not found to have proved in the departmental inquiry. It requires to be noted that the powers conferred under Section 11-A of the Industrial Disputes Act, 1947, the Industrial Tribunal is empowered to reappreciate the evidence which was led in the departmental inquiry. Such view has been taken by the Apex Court in case of THE WORKMEN OF M/S FIRESTONE TYRE & RUBBER CO. OF INDIA P. LTD V. THE MANAGEMENT AND OTHERS reported in AIR 1973 SC 1227. The tribunal has given reasons in support and observed that no eye witness was examined in the departmental inquiry and no other person examined who had attended the accident and the accident form has been filled up by the person who had not attended the accident. Therefore, considering the entire facts and circumstances of the case and considering the limited jurisdiction of this Court while exercising the powers under Article 227 of the Constitution of India, according to my opinion, the tribunal has not committed any error which requires any interference by this Court. Therefore, there is no substance in the present petition and the same is rejected accordingly.

Rule stands discharged. Interim relief, if any, stands vacated.

No order as to costs.

Date : 23.12.2003 [H.K.Rathod, J.]

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